IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

FRIDAY, THE 5TH OCTOBER 2007 / 13TH ASWINA 1929

WP(C).No. 29084 of 2007(K)

PETITIONERS:

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1. M/S.THOMAS HOLIDAYS & RESORTS INDIA PVT.LTD, POOVAR P.O., THIRUVANANTHAPURAM DISTRICT, PIN-695 525, REPRESENTED BY ITS MANAGING DIRECTOR, SHAJI THOMAS.

2. SHAJI THOMAS, S/O.M.K.THOMMAN, MANJANKAL HOUSE, KAKKANADU LANE, KESAVADASAPURAM, THIRUVANANTHAPURAM-4.

BY ADV. SRI.S.JAMES VINCENT

RESPONDENTS:

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1. THE KERALA STATE COASTAL ZONE MANAGEMENT AUTHORITY, THIRUVANANTHAPURAM, REPRESENTED BY ITS MEMBER SECRETARY & DIRECTOR, SCIENCE, TECHNOLOGY AND ENVIRONMENT DEPARTMENT, PATTOM, THIRUVANANTHAPURAM-695 004.

2. THE KULATHOOR GRAMA PANCHAYAT, UCHAKKADA P.O., NEYYATTINKARA TALUK, REPRESENTED BY ITS SECRETARY.

R1 BY SRI.P.PARAMESWARAN NAIR, ASST. SOLICITOR GENERAL

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 05/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE, J.

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W.P.(C)No.29084 OF 2007

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DATED THIS THE 5TH OCTOBER, 2007

J U D G M E N T

In this Writ Petition under Article 226 of the Constitution, the petitioners, a Private Limited Company promoting tourism under the name and style "M/s.Thomas Holidays & Resorts India Pvt. Ltd." and its Managing Director, are aggrieved in that the 2nd respondent-Panchayat is refusing to favourably consider Ext.P7 application for permission to construct a bridge over what they describe as "an artificial water course". It is alleged that the objection taken by the Panchayat is that the proposed construction violates Coastal Zone Regulation notification.

2. Though notice was served on the respondents by special messenger, the 2nd respondent-Panchayat has not entered appearance before this Court. The 1st respondent-Authority has entered appearance through the Assistant Solicitor General, but they have not raised any pleadings resisting the prayers in the Writ Petition.

3. Drawing my attention to the order of the Supreme Court in SLP.No.5038 of 2002 dated 25.4.2003, Mr.James Vincent, learned counsel for the petitioners submitted that the Supreme Court, reversing the judgment of a Division Bench of this Court in

O.P.No.13094 of 1998, has held that the competent authority concerned with like issues is the Kerala State Coastal Zone Management Authority (1st respondent herein). Ext.P6 clearance has been given by the 1st respondent to the petitioners in the matter and the petitioners are ready and willing to abide by all the conditions imposed by the 1st respondent in Ext.P6. Mr.James Vincent drew my attention also to the judgment of the Supreme Court in **Susetha v. State of Tamil Nadu** (2006 AIR SCW 4026) and submitted that the Coastal Zone Regulation notification cannot have any application in the case of artificial tanks and artificial water courses. The same can have application only regarding natural streams or water courses, lakes and sea-shores.

4. I have considered the averments in the Writ Petition as well as the various documents placed on record. On appreciating Ext.P6 in the light of the order passed by the Supreme Court in SLP.No.5038 of 2002, I have no difficulty to agree with Mr.James Vincent that the 1st respondent is the competent authority to regulate the issue. Ext.P6 is a clearance issued to the petitioners by the 1st respondent; of course, it is subject to various conditions. Since Ext.P6 is there, the only thing to be ensured is that the conditions in Ext.P6 are complied with

by the petitioners. Under these circumstances, the Panchayat is not justified in insisting that in spite of Ext.P6, the permission sought for by the petitioner as per Ext.P7 will not be granted.

I therefore dispose of the Writ Petition issuing the following directions:-

The Panchayat will take up Ext.P7 immediately, consider the same in the light of Ext.P6 as well as the judgment of the Supreme Court in **Susetha v. State of Tamil Nadu** (2006 AIR SCW 4026), ensure that the proposed construction at the location shown in Ext.P2 does not offend Ext.P6 and pass final orders on Ext.P7. Final orders as directed above shall be passed by the Panchayat at the earliest and at any rate within three weeks of receiving copy of this judgment together with copy of this Writ Petition and all the exhibits and a copy of the judgment of the Supreme Court in **Susetha's** case (supra).

(PIUS C.KURIAKOSE, JUDGE)

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